

ORIGINAL



0000133726

MEMORANDUM

TO: Docket Control

FROM: Steven M. Olea  
Director  
Utilities Division

*EA for SMD*

DATE: January 30, 2012

RE: STAFF REPORT PURSUANT TO DECISION NO. 72667 TO REVIEW AN AFFIDAVIT BY LITTLE PARK WATER COMPANY, INC. REGARDING ITS VARIOUS REFERENCES TO A BANK LOAN (DOCKET NO. W-02192A-10-0395)

On November 17, 2011, the Arizona Corporation Commission ("Commission") issued Decision No. 72667 authorizing Little Park Water Company, Inc. ("Little Park") to incur long-term debt, in the form of a 7-year loan based on a 20-year amortizing schedule in an amount not to exceed \$140,000 at an interest rate not to exceed 7 percent for specified purposes. Decision No. 72667 also directed Little Park to file, by November 30, 2011, a sworn affidavit, with any attachments necessary for a full understanding, explaining each reference to a loan from Chase Bank or any bank (and the interest thereon) described in Finding of Fact No. 27 of that Decision and for Staff to review the affidavit to determine definitively whether a loan from Chase Bank had already been obtained by Little Park prior to the Decision and, if so, the facts surrounding the loan and whether Little Park had authority to obtain such loan; and file a Staff Report of its findings and recommendations.

Pursuant to Decision No. 72667, Staff hereby submits the attached Report which supports Little Park's contention that it did not directly obtain any loan referred to in Finding of Fact No. 27 prior to obtaining Commission authorization; however, funds were borrowed by Little Park's parent via a line of credit. Staff recommends conducting a hearing to explore Little Park's and Big Park's commitment to complying with Commission directives and utility regulations and to providing full disclosure of relevant information and other related matters.

Any party who wishes may file comments to the Staff Report with the Commission's Docket Control by 4:00 p.m. on or before February 9, 2012.

SMO:GLF:red

Originator: Gordon Fox

Arizona Corporation Commission

**DOCKETED**

JAN 30 2012

DOCKETED BY	
-------------	--

DOCKET CONTROL  
AZ CORP COMMISSION

2012 JAN 30 P 1:52

**RECEIVED**

Service List for: Little Park Water Company, Inc.  
Docket No. W-02192A-10-0395

Mr. Stevan Gudovic  
President  
Little Park Water Company  
45 Castle Rock Road, Suite 4  
Sedona, Arizona 86351

Mr. Craig Marks  
Craig A Marks, PLC  
10645 North Tatum Blvd, Suite 200-676  
Phoenix, Arizona 85028

Ms. Janice Alward  
Chief Counsel, Legal Division  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, Arizona 85007

Mr. Steven Olea  
Director, Utilities Division  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, Arizona 85007

Ms. Lyn Farmer  
Chief Administrative Law Judge, Hearing Division  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, Arizona 85007

**STAFF REPORT PURSUANT TO DECISION NO. 72667  
UTILITIES DIVISION  
ARIZONA CORPORATION COMMISSION**

**LITTLE PARK WATER COMPANY, INC.**

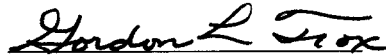
**DOCKET NO. W-02192A-10-0395**

**APPLICATION FOR APPROVAL TO INCUR LONG TERM DEBT**

**JANUARY 30, 2012**

## STAFF ACKNOWLEDGMENT

The Staff Report pursuant to Decision No. 72667 for Little Park Water Company, Inc., Docket No. W-02192A-10-0395 is the responsibility of the Staff members listed below. Gordon L. Fox is responsible for the review of the Company's application.

A handwritten signature in cursive script that reads "Gordon L. Fox". The signature is written in dark ink and is positioned above the printed name.

Gordon L Fox  
Public Utilities Analyst Manager

## TABLE OF CONTENTS

	<u>PAGE</u>
INTRODUCTION .....	1
STAFF ANALYSIS .....	1
<i>COMPLIANCE WITH FINDING OF FACT NO. 27</i> .....	<i>1</i>
<i>DETERMINATION OF PREMATURE LOAN</i> .....	<i>2</i>
<i>BIG PARK LINE OF CREDIT</i> .....	<i>3</i>
<i>AUTHORIZED LOAN TERMS</i> .....	<i>3</i>
STAFF RECOMMENDATIONS .....	4

## INTRODUCTION

Little Park Water Company, Inc. ("Little Park" or "Company") is an investor-owned Arizona corporation and a class E certificated public service corporation providing water services to approximately 72 customers in Yavapai County near the City of Sedona, Arizona.

On September 27, 2010, Little Park filed an application with the Arizona Corporation Commission ("Commission") requesting authorization to incur \$140,000 of long-term debt from JPMorgan Chase & Co. ("Chase") to refinance a short-term bridge loan from its affiliate Big Park Water Company ("Big Park").<sup>1</sup> Commission Decision No. 72667, dated November 17, 2011, authorized Little Park "to incur long-term debt, in the form of a 7-year loan based on a 20-year amortizing schedule in an amount not to exceed \$140,000, at an interest rate not to exceed 7 percent, for the purpose of financing the existing arsenic-treatment facilities, and reimbursing Little Park Water Company, Inc. for any previously repaid principal on the \$118,000 loan obtained from Big Park Water Company, Inc., in August 2008."

Decision No. 72667 also directed Little Park to file "[b]y November 30, 2011, a sworn affidavit, with any attachments necessary for a full understanding, explaining each reference to a loan from Chase Bank or any bank (and the interest thereon) described in Finding of Fact No. 27;" and Staff to review the sworn affidavit, make follow-up inquiries to determine whether Little Park had already obtained a loan prior to the Decision; and, if so, whether Little Park had authority to obtain the loan; and to file by January 30, 2011, Staff's finding and recommendations concerning whether additional proceedings should be held to explore what has occurred and to explore the possibility of taking adverse action against Little Park had it already obtained a loan prior to obtaining Commission approval.

On November 30, 2011, the Company filed an Affidavit of Steven [sic] Gudovic. Pursuant to the directive of Decision No. 72667, this report presents the Staff's conclusions and recommendations of the review of the affidavit by Stevan Gudovic.

## STAFF ANALYSIS

### *Compliance with Finding of Fact No. 27*

Finding of Fact No. 27 of Decision No. 72667 identifies four documents<sup>2</sup> in which the Company had referred to an existing loan and/or the associated interest thereon prior to the Commission's issuance of that Decision. As noted above, the Decision directs the Company to

---

<sup>1</sup> The Water Infrastructure Finance Authority of Arizona rejected the Company's request for financing because it is a refinancing of existing debt.

<sup>2</sup> An e-mail, dated October 22, 2009, from Mr. Gudovic to an attorney for Camp Soaring Eagle; a letter, dated January, 14, 2010, sent by Little Park to Camp Soaring Eagle Foundation; an invoice, dated January 14, 2010, sent by Little Park to Camp Soaring Eagle Foundation; and a letter, dated January 25, 2010, from Little Park to its own attorney.

explain each reference to a loan and to provide any attachments necessary for a full understanding.

Attached to the Affidavit of Stevan Gudovic is a letter, dated November 28, 2011, from Mr. Ian Cribbs of Chase stating that he had discussed a \$140,000 loan for an arsenic treatment plant with Mr. Gudovic, but that he did not find that Little Park had ever obtained a loan from Chase. Neither the Affidavit of Stevan Gudovic nor the letter from Mr. Cribbs makes any mention of the four documents the Company was directed to explain. Thus, the Affidavit of Stevan Gudovic does not comply with the requirement of Decision No. 72667 to explain each of the four references to a loan identified in Finding of Fact No. 27 of Decision No. 72667.

#### *Determination of Premature Loan*

In response to Staff data requests GLF 1-1 and GLF 1-4, the Company explained that Little Park obtained a \$117,642 loan from Big Park and that Big Park obtained the funds to loan to Little Park through a line of credit from Chase Bank. In response to Staff data request GLF 1.1, the Company asserts that the references to the loan and interest in the four correspondences in question pertain to the collective debt and interest of the two companies. The Company provided Staff with detailed accounting information to support this assertion. In addition, Little Park's annual report filed with the Commission for the year ended December 31, 2009, shows \$117,642 as the ending balance in Acct. No. 234, "Notes/Accounts Payable to Associated Companies." The Company also provided Staff with documentation showing that the \$150,326 balance Little Park presents in Acct. No. 234 for the year ended December 31, 2010, is composed of \$116,300 for the Big Park loan and \$34,026 for other obligations to Big Park.

Any loan from Big Park to Little Park should be reflected in Big Park's balance sheet as a receivable from Little Park. The Company provided Staff with support for Big Park's balances of receivables from Little Park for recent years. This data supports the balances Big Park presents in Acct. No. 146, "Notes/Receivables from Associated Companies" in its annual reports filed with the Commission for the years ending December 31, 2007, 2008 and 2010. The supporting information for the year ending December 31, 2009, does not match the annual report and shows a \$150,159 reclassification to "Investment in Little Park Water Company" to an unspecified account. The Company's response to Staff data request GLF-1.5 states that the reclassification was made to Acct. No. 174 "Miscellaneous Current and Accrued Assets."

Little Park's November 17, 2011, compliance filing shows that it obtained its current loan from Sunwest Bank on November 15, 2011, subsequent to obtaining Commission authorization for a loan in Decision No. 72667. The November 28, 2011, letter from Mr. Ian Cribbs attached to that filing supports the Affidavit of Stevan Gudovic that Little Park never borrowed funds from Chase. Staff's review revealed no information to indicate that Little Park directly obtained a loan from any lender other than Big Park prior to obtaining Commission authorization.

All of the above supports Little Park's contention that it did not obtain a long-term loan from Chase or any other party except Big Park prior to obtaining Commission authorization.

Nevertheless, the Company's apparent reluctance to fully disclose relevant information regarding the transactions surrounding the Big Park loan to Little Park in its earlier filings in this case and in its communications with others is a continuing concern. Effective regulation of utilities is dependent upon the forthright veracity of those utilities in communications with the regulator. The Company has fallen short in this aspect of its obligations to the Commission.

#### *Big Park Line of Credit*

Big Park is the parent of Little Park. As discussed above, the Company asserts that Big Park obtained the funds to loan to Little Park through a line of credit from Chase Bank. In the annual reports filed with the Commission Big Park reports the following year end balances in Account No. 234 "Notes/Accounts Payable to Associated Companies": 2004, \$0; 2005, \$14,000; 2006, \$14,000; 2007, \$64,600; 2008, \$47,350; 2009, \$135,525; and 2010, \$101,108. Big Park reported \$90,508 for long-term debt in 2010<sup>3</sup> and \$0 long-term debt for the years 2004 through 2009. The absence of long-term debt in the years up to 2009 indicates that none of the amounts shown in Account No. 234 represent the current portion of long-term debt, i.e., it pertains to short-term obligations. However, since the balance remains positive for the years 2005 through 2009 with an upward trend, it appears that these balances reflect carryover from year to year. To the extent that borrowings are initially short-term but remain outstanding for more than twelve months, they become long-term obligations that require Commission authorization under A.R.S. § 40-301. Consequently, it appears that Big Park may have existing debt obligations reporting in Account No. 234 that require Commission authorization.

#### *Authorized Loan Terms*

As noted above, Commission Decision No. 72667, dated November 17, 2011, authorized Little Park "to incur long-term debt, in the form of a 7-year loan based on a 20-year amortizing schedule in an amount not to exceed \$140,000, at an interest rate not to exceed 7 percent and to submit copies of the executed financing document within 60 days of the date of that Decision. Little Park submitted copies of the executed financing documents on December 6, 2011. Those documents show that Little Park entered into an agreement with Sunwest Bank to borrow \$140,000 and make monthly principal and interest payments of \$1,010.05 for 83 months and one \$109,705 payment on November 15, 2018, which closely approximates a 7-year loan based on a 20-year amortization. The Promissory Note issued to Sunwest Bank allows changes in the interest rate from time to time (no more often than every 5 years starting November 15, 2015, based on the Five (5) Year Treasury Constant Maturity between a minimum annual interest of 6.000 percent and a maximum of 10.250 percent.

---

<sup>3</sup> Decision No. 71793, dated July 12, 2010, authorized Big Park to incur an 18 to 22 year amortizing loan in an amount not to exceed \$415,000 pursuant to a loan agreement with the Water Infrastructure Finance Authority of Arizona.



In data response GLF 1.-11, Staff asked the Company to explain how the provision of this Promissory Note that allows changes in the interest rate is in compliance with the 7 percent ceiling authorized. The Company replied:

*By the time the financing was finally approved, the direct loan from Chase Bank was no longer available. The only available loan was from Sun West. The present interest rate is fixed for four years at only 6.0%, 100 basis points below that approved in Decision No. 72667. However, the lender would not agree to fix the interest rate for seven years.*

While the overall effect of the Sunwest bank loan may ultimately be similar the authorized terms, the Company has taken unauthorized liberties in obtaining this loan. The Company's December 6, 2011, filing makes no mention of the deviations between the authorized and actual loan terms. The Company's continuing practice of failing to comply with Commission orders and regulations and to fully disclose relevant information is disconcerting.

#### **STAFF RECOMMENDATIONS**

Staff recommends:

- Conducting a hearing to explore Little Park's and Big Park's commitment to complying with Commission directives and utility regulations and to providing full disclosure of relevant information and other related matters.